IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

OP.No. 12189 of 2000(A)

PETITIONER:

CHINMAYA MISSION EDUCATIONAL &
CULTURAL TRUST, THAPOVANAM,
PALAKAD, REP.BY ITS CHIEF EXECUTIVE.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:
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1 REGIONAL JOINT LABOUR COMMISSIONER &
APPELLATE AUTHORITY UNDER THE PAYMENT
OF GRATUITY ACT, ERNAKULAM.

2. A.K.RANGANATHAN, VII/144,
KUTTANKUZHIKALAN, KOLLANGODE,
678 506.

BY ADV. SRI.M.V.JOSEPH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.12189/2000

ORDER ON CMP. NO.20036/2000 IN OP. 12189/2000

DISMISSED

06.11.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE IST RESPONDENT DT. 26.10.98 IN G.C. 4/98

EXT.P2:- COPY OF THE DT. 23.1.2000 PASSED BY THE IST RESPONDENT AGAINST THE APPEAL NO.GA. NO.1/99.

/TRUE COPY/

P.A. TO JUDGE

tss

S. SIRI JAGAN, J.

O.P.No. 12189 OF 2000

Dated this the 6th day of November, 2007

JUDGMENT

The petitioner is a Trust conducting an Educational Institution. The 2nd respondent was a teacher of the School. He filed an application before the controlling authority under the Payment of Gratuity Act claiming gratuity under Act from the petitioner Trust. By Ext.P1 order, the controlling authority directed payment of an amount of Rs.26,109/ with interest at 9% to the 2nd respondent as gratuity payable under the payment of Gratuity Act. Appeal filed by the petitioner has been dismissed by Ext.P2. The petitioner is challenging Exts.P1 and P2 orders in this original petition.

2. The petitioner's contention is that teacher of an educational institution will not answer the definition of 'employee' under the Payment of Gratuity Act, 1972 and the petitioner being a teacher cannot therefore claim gratuity under the Act. The petitioner relies on the decision of the Supreme Court in **Ahmedabad Pvt. Primary Teachers' Association V.**

Administrative Officer [2004(1) KLT 470(SC)] in support of his case.

3. I have heard parties and considered the rival arguments. On a perusal of the decision in **Ahmedabad Pvt. Primary Teachers' Association's** case, it is clear that the Supreme Court has held that teachers are not covered by the definition 'employee' under the Payment Gratuity Act and teachers of a private school are not, therefore, entitled to gratuity in view of that decision. In such circumstances, Exts.P1 and P2 orders, by which gratuity has been directed to be paid to the 2nd respondent, who is a teacher, are patently unsustainable. Following the said Supreme Court decision, I set aside EXts.P1 and P2 orders and hold that the 2nd respondent is not entitled to gratuity under the payment of gratuity Act. However, this will not preclude the 2nd respondent from claiming any payment under any Scheme formulated by the petitioner for granting similar benefits.

The original petition is disposed of as above.

S. SIRI JAGAN, JUDGE

Acd